



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Michael S. KINCH et al.

Group Art Unit: 1645

Serial No.: 09/640,952

Examiner: Unknown

Filed: 17 August 2000

Docket No.: 290.0009 0101

Title: EPHA2 AS A DIAGNOSTIC TARGET FOR METASTATIC CANCER (As Amended)

Assistant Commissioner for Patents
Washington, D.C. 20231

We are transmitting the following documents along with this Transmittal Sheet (which is submitted in triplicate):

- ☒ A return postcard.
☐ A Petition for Extension of Time for ___ month(s) and a check in the amount of \$ ___ for the required fee.
☐ An Information Disclosure Statement (___ pgs); copies of ___ applications; 1449 forms (___ pgs); and copies of ___ documents cited on the 1449 forms.
☐ A check in the amount of \$ ___, for _____.
☐ A certified copy of a ___ application, Serial No. ___, filed _____, the right of priority of which is claimed under 35 U.S.C. §119.
☒ Other: Request for Corrected Filing Receipt (2 pgs.); Filing Receipt with corrections marked in red (3 pgs.); and a copy of the Declaration of Katherine E. Kilpatrick (4 pgs.).
☐ Amendment ___ No Additional fee is required. ___ The fee has been calculated as shown:

Fee Calculation for Claims Pending After Amendment					
	Pending Claims after Amendment (1)	Claims Paid for Earlier (2)	Number of Additional Claims (1-2)	Cost per Additional Claim	Additional Fees Required
Total Claims				x \$18 =	
Independent Claims				x \$80 =	
One or More New Multiple Dependent Claims Presented? If Yes, Add \$270 Here →					
Total Additional Claim Fees Required					

Please consider this a PETITION FOR EXTENSION OF TIME for a sufficient number of months to enter these papers and please charge any additional fees or credit overpayment to Deposit Account No. 13-4895. Triplicate copies of this sheet are enclosed.

CERTIFICATE UNDER 37 C.F.R. §1.8: The undersigned hereby certifies that this Transmittal Letter and the paper(s), as described hereinabove, are being deposited in the United States Postal Service, as first class mail, in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231, on this 19th day of April, 2001.

MUETING, RAASCH & GEBHARDT, P.A.
Customer Number: 26813

By: Victoria A. Sandberg
Name: Victoria A. Sandberg
Reg. No.: 41,287
Direct Dial: 612-305-1226
Facsimile: 612-305-1228

(LARGE ENTITY TRANSMITTAL UNDER RULE 1.10)

Receipt
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AUG 15 2001

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#13



PATENT
Docket No. 290.0009 0101

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s):	Michael S. Kinch et al.)	Group Art Unit:	1645
)		
Serial No.:	09/640,952)	Examiner:	Unknown
)		
Filed:	August 17, 2000)		
)		
For:	EPHA2 AS A DIAGNOSTIC TARGET FOR METASTATIC CANCER (As Amended)			

REQUEST FOR CORRECTED FILING RECEIPT

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

Upon review of the Filing Receipt received from the U.S. Patent and Trademark Office in connection with the above-identified application, the following errors were noted.

Applicant Katherine E. Kilpatrick's name is incorrect. Applicant's name should read "Katherine" and not "Kathy".

A copy of the Filing Receipt with these corrections marked in red is enclosed. A copy of the Declaration of Katherine E. Kilpatrick is also enclosed. Applicants respectfully request a corrected Filing Receipt.

Request for Corrected Filing Receipt

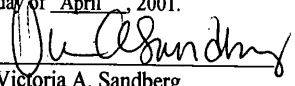
Page 2 of 2

Applicant(s): Michael S. Kinch et al.

Serial No.: 09/640,952

Filed: August 17, 2000

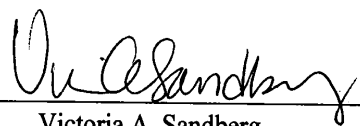
If the Examiner has any questions regarding this submission, please contact Applicants' Representative at the below-listed telephone number.

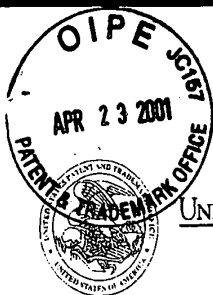
<p>CERTIFICATE UNDER 37 C.F.R. 1.8:</p> <p>The undersigned hereby certifies that this paper is being deposited in the United States Postal Service, as first class mail, in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231, on this <u>19th</u> day of <u>April</u>, 2001.</p> <p> Victoria A. Sandberg</p>
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Respectfully submitted,
Michael S. Kinch et al.
By their Representatives,
Mueiting, Raasch & Gebhardt, P.A.
P.O. Box 581415
Minneapolis, MN 55458-1415
Telephone (612)305-1220
Facsimile (612)305-1228
Customer Number 26813

19 April 2001
Date

VAS/kah

By: 
Victoria A. Sandberg
Reg. No. 41,287
Direct Dial (612)305-1226



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UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

APPLICATION NUMBER	FILING DATE	GRP ART UNIT	FIL FEE REC'D	ATTY. DOCKET NO	DRAWINGS	TOT CLAIMS	IND CLAIMS
09/640,952	08/17/2000	1645	3018	3220-66872	2	27	5

Barnes & Thornburg
11 South Meridian Street
Indianapolis, IN 46204*Status
Check
8-17-01 DV*

FILING RECEIPT



OC000000005813369

Date Mailed: 03/01/2001

Receipt is acknowledged of this nonprovisional Patent Application. It will be considered in its order and you will be notified as to the results of the examination. Be sure to provide the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION when inquiring about this application. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. If an error is noted on this Filing Receipt, please write to the Office of Initial Patent Examination's Customer Service Center. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the PTO processes the reply to the Notice, the PTO will generate another Filing Receipt incorporating the requested corrections (if appropriate).

Applicant(s)

Michael S. Kinch, Lafayette, IN ;
Nicole D. Zantek, Silver Springs, MD ;
Katherine Kathy E. Kilpatrick, Chapel Hill, NC ;

Continuing Data as Claimed by Applicant

THIS APPLN CLAIMS BENEFIT OF 60/149,259 08/17/1999

Foreign Applications

If Required, Foreign Filing License Granted 10/10/2000

Title

Antibodies as a cancer diagnostic

Preliminary Class

435

Data entry by : BURNS, ERIC

Team : OIPE

Date: 03/01/2001



**LICENSE FOR FOREIGN FILING UNDER
Title 35, United States Code, Section 184
Title 37, Code of Federal Regulations, 5.11 & 5.15**

GRANTED

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 36 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Office of Export Administration, Department of Commerce (15 CFR 370.10 (j)); the Office of Foreign Assets Control, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

NOT GRANTED

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15(b).

PLEASE NOTE the following information about the Filing Receipt:

- The articles such as "a," "an" and "the" are not included as the first words in the title of an application. They are considered to be unnecessary to the understanding of the title.
- The words "new," "improved," "improvements in" or "relating to" are not included as first words in the title of an application because a patent application, by nature, is a new idea or improvement.
- The title may be truncated if it consists of more than 600 characters (letters and spaces combined).
- The docket number allows a maximum of 25 characters.
- If your application was submitted under 37 CFR 1.10, your filing date should be the "date in" found on the Express Mail label. If there is a discrepancy, you should submit a request for a corrected Filing Receipt along with a copy of the Express Mail label showing the "date in."
- The title is recorded in sentence case.

Any corrections that may need to be done to your Filing Receipt should be directed to:

Assistant Commissioner for Patents
Office of Initial Patent Examination
Customer Service Center
Washington, DC 20231



Docket No: 290.0009 0101

DECLARATION AND POWER OF ATTORNEY

Katherine E. Kilpatrick ICEE 1-23-01

We, Michael S. Kinch, ~~Kathy E. Kilpatrick~~, and Nicole D. Zantek, declare that: (1) our respective citizenships and residence/mailling addresses are indicated below; (2) we have reviewed and understand the contents of the specification identified below, including the claims, as amended by any amendment specifically referred to herein, (3) we believe that we are the original, first, and joint inventors of the subject matter in

ANTIBODIES AS A CANCER DIAGNOSTIC

Filing Date: 17 August 2000 - Serial No.: 09/640,952

Preliminary Amendment Submitted Herewith

described and claimed therein and for which a patent is sought; and (4) we hereby acknowledge our duty to disclose to the United States Patent and Trademark Office all information known to us to be material to the patentability as defined in Title 37, Code of Federal Regulations, §1.56.*

We hereby claim foreign priority benefits under Title 35, United States Code, §119(a)-(d) or §365(b) of any foreign application(s) for patent or inventor's certificate listed below, or §365(a) of any PCT international application which designates at least one country other than the United States of America listed below, and have also identified below any foreign application for patent or inventor's certificate, or any PCT international application having a filing date before that of the application on the basis of which priority is claimed:

- a. ☒ no such applications have been filed.
b. ☐ such applications have been filed as follows:

FOREIGN APPLICATION(S), IF ANY, CLAIMING PRIORITY UNDER 35 USC §119(a)-(d), §365(a), and/or §365(b)			
COUNTRY	APPLICATION NUMBER	DATE OF FILING (day, month, year)	DATE OF ISSUE (day, month, year)

ALL FOREIGN APPLICATIONS, IF ANY, FILED BEFORE THE PRIORITY APPLICATION(S)			
COUNTRY	APPLICATION NUMBER	DATE OF FILING (day, month, year)	DATE OF ISSUE (day, month, year)

* Title 37, Code of Federal Regulations, §1.56 is reproduced on the attached page.

Declaration and Power of Attorney

Page 2 of 4

Serial No. 09/640,952

Filing Date: 17 August 2000

Title: ANTIBODIES AS A CANCER DIAGNOSTIC

We hereby claim the benefit under Title 35, United States Code §119(e) of any United States provisional application(s) listed below.

- a. ☐ no such applications have been filed.
b. ☒ such applications have been filed as follows:

PROVISIONAL APPLICATION(S), IF ANY, UNDER 35 USC §119(e)	
APPLICATION NUMBER	DATE OF FILING (day, month, year)
60/149,259	17 August 1999

We hereby claim the benefit under Title 35, United States Code, §120 of any United States applications or §365(c) of any PCT international application(s) designating the United States of America, listed below.

- a. ☐ no such applications have been filed.
b. ☐ such applications have been filed as follows:

APPLICATION NUMBER	DATE OF FILING (day, month, year)	STATUS (patented, pending, abandoned)

Insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States or PCT international application in the manner provided by the first paragraph of Title 35, United States Code, §112, we acknowledge the duty to disclose material information as defined in Title 37, Code of Federal Regulations, §1.56 which occurred between the filing date of the prior application and the national or PCT international filing date of this application.

We hereby appoint Ann M. Mueting (Reg. No. 33,977), Kevin W. Raasch (Reg. No. 35,651), Mark J. Gebhardt (Reg. No. 35,518), Victoria A. Sandberg (Reg. No. 41,287), Matthew W. Adams (Reg. No. 43,459), Loren D. Albin (Reg. 37,763), David L. Provence (Reg. No. P-43,022), and Brian J. Walsh (Reg. No. 45,543) our attorneys with full powers (including the powers of appointment, substitution, and revocation) to prosecute this application and any division, continuation, continuation-in-part, reexamination, or reissue thereof, and to transact all business in the Patent and Trademark Office connected therewith.

Please direct all correspondence in this case to:

Attention: Victoria A. Sandberg
Mueting, Raasch & Gebhardt, P.A.
P.O. Box 581415
Minneapolis, MN 55458-1415
Telephone No. (612) 305-1220
Facsimile No. (612) 305-1228
Customer Number 26813

Declaration and Power of Attorney

Page 3 of 4

Serial No. 09/640,952

Filing Date: 17 August 2000

Title: ANTIBODIES AS A CANCER DIAGNOSTIC

The undersigned declare further that all statements made herein of their own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Wherefore, we pray that Letters Patent be granted to us for the invention described and claimed in the specification identified above and we hereby subscribe our names to the foregoing specification and claims, Declaration and Power of Attorney, on the date indicated below.

Name: **Michael S. KINCH**

Date

Citizenship: United States

Residence: 2320 Flowering Crab Drive, Lafayette, Indiana 47905

KEK Name: ~~Kathy E. KILPATRICK~~ *Katherine E. Kilpatrick*

1-23-01
Date

Citizenship: United States

Residence: 9204 Laurel Springs Drive, Chapel Hill, North Carolina 27516

Name: **Nicole D. ZANTEK**

Date

Citizenship: United States

Residence: 13632 Colgate Way, No. 744, Silver Springs, Maryland 20904

§ 1.56 Duty to disclose information material to patentability.

(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is cancelled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:

- (1) Prior art cited in search reports of a foreign patent office in a counterpart application, and
- (2) The closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.

(b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and

- (1) It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or
- (2) It refutes, or is inconsistent with, a position the applicant takes in:
 - (i) Opposing an argument of unpatentability relied on by the Office, or
 - (ii) Asserting an argument of patentability.

A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

(c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:

- (1) Each inventor named in the application;
- (2) Each attorney or agent who prepares or prosecutes the application; and
- (3) Every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.

(d) Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent, or inventor.

(e) In any continuation-in-part application, the duty under this section includes the duty to disclose to the Office all information known to the person to be material to patentability, as defined in paragraph (b) of this section, which became available between the filing date of the prior application and the national or PCT international filing date of the continuation-in-part application.